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ABSTRACT

Kenneth Burke's 20 ratics permit the rhetorical critic to make very specific statements about the discourse under analysis and open the way fcr analytic speculatiсn. The ratio method permits the critic to describe and understand the specific qualities of practical ethical dispute. Burkian ratios were employed to analyze the justificatory rhetoric of Clement F. Hayreswcrth during the Judiciary Committee Hearings on his Supreme Court ncmination. An examination of Judge Haynesworth's testimony before the ccmmittee revealed 132 instances of ethical justificatiсn, which were coded acccrding to the featured motives and ratio opposites that Burke has delineated. The findings indicate that Hayreswcrth relied heavily upсn scene-act and scene-agent ratios, portraying himself as the victim of a scene he could not contrcl. This justificatory strategy was bcth rhetorically and culturally deficiert because it violated the cultural expectations of "judgeness." (Author/RL)

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BURKIAN RATIOS AND CLEMENT HAYNESWORTH: A PROPOSED METHOD AND APPLICATION

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Abstract

This paper uses a Burkian ratio method to analyze the Judiciary Committee Hearings on the Supreme Court nomination of Clement F. Haynesworth. Findings indicate that Haynesworth relied heavily upon the scene-act and scene-agent ratios and thus portrayed himself as the victim of a scene he could not control. This justificatory strategy, it is posited, was both rhetorically and culturally deficient because it violated our cultural expectations of "judgness."

BURKIAN RATIOS: A PROPOSED METHOD AND APPLICATION

On August 18, 1969, the Senate Judiciary Committee held hearings on the Supreme Court nomination of Clement F. Haynesworth.[1] Haynesworth's nomination problems came as a surprise to many watchers who expected his hearing to be automatic confirmation, not investigation. Haynesworth's attempts to meet committee challenges rhetorically provide an interesting study of practical ethics and justificatory rhetoric.[2]

For the critic interested in studying these statements of practical ethics rhetorically, the demand for ethical justification, or ethical defense, connotes a situation amenable to systematic analysis. By ethical justification I refer to rhetor's attempts to explain, clarify, or justify motives which have been challenged in the public arena; ethical justification is the study of rhetorical handling of practical ethical disputes.

In rhetorical matters laden with ethical concerns, motives seem to be one way to analyze discourse profitably.[3] Though treatments of motives and ethics abound, none seems to have utilized fully Kenneth Burke's conceptions of motives and ethics to examine what goes on when a rhetor finds himself subject to ethical charges. Burke's work offers the rhetorical critic a way to describe and explain the phenomenon of perceived morality.

Burke maintains that the basic difference between people and objects is that "things move, persons act."[4] Action, which for Burke implies the exercise of choice, is concerned with ethical issues since "when one talks of the will, one is necessarily in the field of the moral; and the field of the moral is, by definition, a field of action."[5] Here Burke has claimed that the study of ethics is not something which is incidental to the study of human behavior. For Burke, the study of humankind is the study of action; the study of ethics, or the field of the moral, is also the study of action or human behavior. By maintaining that the study of ethics and the study of man are, in effect, the same, Burke has placed ethical questions at the center of man's symbolic behavior. Ethical questions are not something which can be imposed upon the study of human action; ethical questions <u>are</u> the study of human action.

Burke maintains that ethical choices can best be understood by "the attributing of motives."[6] The examination of motives, or "what is involved when we say what people are doing and why they are doing it"[7] offers a way

a way for the critic to understand what can potentially influence people as they choose one alternative instead of another. The means by which one understands these alleged motives is, for Burke, through the utilization of the five key terms of the dramatistic pentad.[8] When the critic attributes these five terms, Burke claims one's goal is to "simplify the subject" of human motivation.[9] Through Burke's pentad, one can describe what people are doing and what is involved in their day-to-day ethical choices.

By featuring one of these five pentadic terms and by viewing the other terms in the perspective of the featured element,[10] the critic can begin to discover "what goes with what"--one can begin to pair the pentadic elements into ratios.[11] As Burke says, "A ratio is a formula indicating a transition from one term to another."[12] The use of ratios is a crucial step toward a more fully developed utilization of Burke's conception of the pentad of motives. Burke reiterates the importance of pairing the pentadic elements into ratios when he maintains:

> If we look about us, we find examples of the . . . ratios everywhere, for they are at the very centre of motivational assumptions.[13]

Further, Burke claims that a featuring of motives is essentially a dialectical enterprise--an enterprise designed to understand both alleged motives and opposites. As Burke says, "we hope to make clear . . . dialectical issues necessarily figure in the subject of motivation."[14] "By dialectics," continues Burke, "we mean the employment of the possibilities of linguistic transformation."[15] The affinity between ratios and dialectic is apparent. By pairing pentadic elements into ratios dialectically, one is able to discover, not only "what goes with what,"[16] but also "the placement of one thought or thing in terms of its opposite."[17]

Burke first maintains that the five pentadic elements, when paired oppositionally, "would allow for ten" ratios.[18] He then posits that the order of the terms within the ratio may reflect a different featuring of motives. As Burke explains:

> I have also found that it is sometimes useful to differentiate the ratios by the order of the terms. For instance, by a 'scene-act ratio' one would refer to the effect that a scene has upon an act, and by an 'act-scene ratio' one would refer to the effect that an act has upon a scene.[19]

Burke's concern for the order of the terms within the ratios can perhaps be further clarified with an example. A rhetor could make use of the

purpose-agent ratio by explaining why he acted in a particular way and by opposing that statement with an explanation of his concern for his own well being. "I had to rescue the other men (purpose) even if I had to risk my life (agent)" exemplifies the purpose-agent ratio. In contrast to this statement, the agent-purpose ratio is exemplified by "I was worried about taking care of myself (agent); I don't know why I ran away (purpose)." The two ratios represent two very different modes of action. The first, when purpose is placed before self, is often referred to as heroism; the second, where individual well-being is placed before purpose, is often termed cowardice. By reversing the order of the elements within the ratios, two completely different approaches to a situation are exhibited.

It is this oppositional pairing and reversal which allows Burke to opine that "the list of possible combinations [of ratios] would thereby be expanded to twenty."[20] It is this system of twenty ratios that helps the critic illumine the Haynesworth rhetoric of justification.

Justificatory rhetoric, as I use the term here, is based upon the notion of interaction between an ethical challenger and a rhetor attempting to justify his or her ethical choices. In this respect, the selection of committee hearings seems particularly appropriate to the study of justificatory rhetoric. Committes of Congress often serve as inquisitors or arbitrators of ethical dispute; as such, their questions of and challenges to rhetor's who have been called to testify in their own behalf reveal some provocative examples of practical ethical argument.

The Coding of Ethical Justification

The selected sample was read and when a statement of ethical justification was located,[21] it was coded according to: (A) the featured motive; and (B) this motive's ratio opposite. Since the kinds of questions, the questioners, and the complexity of the questions vary, it is not possible to establish and standardize the length of a statement of ethical defense. Some justifications are only one word long--as when a rhetor simply answers a direct question; some may be several sentences long--as when motives or actions are being explained in depth; and some ethical defenses may continue for a number of pages. Any time Judge Haynesworth attempted to justify ethically challenged motives, these responses were coded into one of the twenty categories of Burkian ratios.

An Application of the Ratio Method: Clement F. Haynesworth

Clement Haynesworth's nomination to serve on the United States' Supreme Court was rife with controversy. Haynesworth's nomination, on August 18, 1969, came at the height of the Vietnam conflict and the resultant campus disturbances. Haynesworth's nomination to the Court met with almost instantaneous opposition from a number of forces; he was accused of being anti-black and anti-labor, and his financial ties to a number of prominent businesses made his selection further suspect. Haynesworth's plight was further worsened because he was selected to fill the traditional "Jewish Seat" on the Court; his Episcopalian religious ties scarcely satisfied members of the American Jewish Congress. From virtually the moment his name was announced, reservations from Roy Wilkins, John Lindsay, George Meany, and Jacob Javits abounded. While religious and labor leaders voiced concern over Haynesworth's appointment, by far the most serious charges were leveled against his financial interests while he was serving as a judge in South Carolina. Haynesworth was charged with sitting as a judge when he had a financial stake in the outcome of the decision. Specifically, he presided over a case involving the Brunswick Corporation while he owned stock in that company, and he had sat in judgment on another case, litigation involving Carolina Vend-O-Matic, in which he had "substantial" financial interest in the outcome. After eight days of hearings before the Senate Judiciary Committee, the nomination of Clement Haynesworth was doomed to defeat. Though the Committee ultimately voted 10-7 in his favor, the full Senate rejected Haynesworth by a 55-45 margin.

Judge Haynesworth's testimony before the Judiciary Committee covered 109 pages,[22] and 132 instances of ethical justification were isolated and coded according to featured motives and ratio opposites.

In his appearance before the Committee, Haynesworth based over half of his ethical justifications on allusions to the scene as featured motive. [See Table 1] Haynesworth was charged with sitting in conflict of interest. The disclosure of his financial holdings with Brunswick and Carolina Vend-O-Matic while he was a sitting judge had placed Haynesworth in an ethically questionable position. To defend himself, Haynesworth claimed that the committee needed to understand the background of the situations so that they could appreciate better how these circumstances had arisen. The nominee claimed that he heard a great number of cases while on the bench and that

his relations with the businesses in question were quite casual:

> We had a great press of cases, of course, at that time. We still do. And you move quickly as you can to something else. When you are done with one you lay it aside mentally as well as physically . . . Shortly before the Brunswick stock was purchased, Mr. McCall [Haynesworth's broker] recommended that these funds I had for reinvestment be invested in Brunswick. I do not remember a great many of the details of the stock . . . The case that we had, of course, did not enter my mind.[23]

Haynesworth wanted the Senators to understand his decision to sit in the context of the circumstances. To do this, he relied primarily upon allusions to scenic forces to justify his behavior.

The Judge also claimed that what he did, or act as apparent motive, was important as well. Even though he admitted sitting on cases where his personal interest could be questioned, his decisions clearly did not favor those corporations. As Haynesworth explained, "I completely accepted the findings of the [National Labor Relations] Board,"[24] which had the effect of ruling against the stockholders of Carolina Vend-O-Matic. In fact, in each of the disputed cases involving a "substantial" financial interest, Haynesworth had sided with the majority of the Court in ruling <u>against</u> the firms in which he held stock. Haynesworth emphasized these acts, or what he had done, as the featured motive in over one-fourth of his Judiciary Committee justifications.

Haynesworth relied upon purpose-related featurings parsimoniously, usually only in the context of "seeing justice served." As Haynesworth stated, "The only interest I had was that of a judge, sir, to see that the result was what I thought was a correct one in law."[25] The three motives related to scene, act, and purpose account for almost nine-tenths of Judge Haynesworth's ethical defenses.

These defenses can be further illuminated by examining the ratio opposites of the featured motives. While Haynesworth featured scene over half the time as his primary means of ethical justification, this scenic focus was most often opposed to act: the result was a heavy reliance on the scene-act ratio. [Insert Table 2] Haynesworth wanted the Senate to understand the background of the complex situation in which he operated. While he tended to emphasize this scene, he placed act--or what he had done by sitting in conflict of interest--in opposition to this. As Haynesworth claimed:

> The record shows they [the corporations in which he invested] did not know [he was a stockholder.] In the second place the record shows they [his decisions] did it [the corporation] no favors.[26]

Haynesworth apparently saw his rhetorical mission as one of clarification; he felt compelled to explicate the scene to members of the Committee by opposing that complex of forces to his decision to sit in conflict of interest.

In addition to the scene-act ratio, Haynesworth also made extensive use of the scene-agent ratio. When informed that the stock he sold, after he realized the possible charges of conflict of interest, would have appreciated by over a million dollars had he retained it, Haynesworth claimed:

> Mr. Chairman, I didn't sell this because I did not think it was a good investment to retain.[27]

Haynesworth maintained that the financial losses he had suffered in an attempt to avoid conflicts of interest could be understood by opposing this alleged motive, agent (the furthering of his own good,) to scene (the background or context of what was going on.) Haynesworth apparently felt that if the Committee could only understand the nature of his relationship to the corporations in question and the extent to which his own finances had suffered as a result, they would be sure to find him fit for Supreme Court service. Such was, apparently, not the case.

Judge Haynesworth's justificatory discourse reveals that he relied, almost half the time, on defenses related to either the scene-act or scene-agent ratios. Haynesworth's attempts to clarify the scene in which he operated by opposing act and agent to that scene ultimately fell short, however. In the end, Haynesworth was deemed unfit to sit as a Justice of the Supreme Court.

Configurational Characteristics of Congressional Hearings

This analysis has used congressional hearings in an attempt to understand something of justificatory rhetoric. These hearings seem to have some characteristics which affect, in a significant way, a rhetor's choice of justificatory strategy. First, the hearings ask a rhetor to delve into the past in order to meet the rhetorical demands of the present. In this respect motive attributions related to scene, or when action took place, may have gained importance. The hearings are essentially backward-looking rhetorical situations; they ask rhetors to explain ex post facto

what was involved in the exercise of ethical choice. The predominance of scene-related motives may be accounted for, at least in part, by the nature of the congressional hearing.

Not only are the hearings backward-looking, they are also primarily legal arguments. This second aspect of the hearings may be important in two ways. First, legal argument has an overriding concern for precedent. Haynesworth's featuring of scene was often an attempt to show the precedent for challenged actions by reaching into the past for examples and explanations. That Haynesworth felt compelled to show the precedent for his alleged transgressions may account for a part of the scene's many invocations. After all, Haynesworth was merely playing by the legal rules he would expect to see respected in his courtroom. Second, the "reasonable man" standard--how would a reasonable man have acted given a particular situation--is often the legal standard of judgment for appropriate action. Haynesworth attempted to show that he <u>was</u> a reasonable man; he claimed that, if others were presented with similar circumstances, their actions would have been similar. Again, Haynesworth was asking to be judged as he, himself, would judge: by the standard of "reasonable action." This legalistic standard of propriety may account, at least partially, for the predominance of motives attributed to scene.

<u>Clement Haynesworth's Judicial Weltanschauung</u>

Though these legalistic speculations illuminate Haynesworth's rhetorical choices, other critical conjectures can help round out our understanding of Haynesworth's apparent assessment of his situation. Basic stimulus-response speculation is helpful. The tendency to explain actions by referring to the conditions which allegedly gave rise to these actions is consistent with the socio-psychological notion of operant conditioning. By his reliance upon scenic justifications, Haynesworth consistently offered the argument that, if others were presented with the same stimulus--or scene--they would have reacted similarly. Such an explanation offers us cultural insights--insights into the ways that members of this society may view their actions and the reasons for their actions. Rats which run through a maze are controlled by the "scene" of that maze. Human agents who are thrust into ethically-charged situations may feel their "scene" is equally controlling. Thus the critic finds that an ethically-challenged Haynesworth bolstered the importance of scene and

denigrated the importance of agent which he attempted to justify his actions.

Ling has posited that the featuring of scene can be related to victimage; that is, that a scene can be described such that an agent is "totally at the mercy of a scene that he cannot control."[28] Such was Haynesworth's position. Victimage, further, seems to be a defensive rhetorical position since it denies the agent's participation in choice making: it makes the agent appear un-responsible for his actions. That Haynesworth would have wished to avoid such a position seems clear. But by relying so heavily upon allusions to the scene which controlled him--and as a result by casting himself into the role of the helpless victim--Haynesworth found himself engaged in repeated rhetorical back-peddling. Haynesworth's reliance upon scenic justifications undermined any hopes he might have had to avoid a defensive, victim-like stance. And from a judge, a potential Supreme Court judge at that, such a posture is surely damaging.

While legal and socio-psychological explanations are useful, some final speculation can be offered by adopting a philosophic terministic screen. Burke claims that the various featurings of motives can be related to philosophic outlooks:

> For the featuring of scene the corresponding philosophic terminology is materialism. For the featuring of agent the corresponding philosophic terminology is idealism. For the featuring of agency the corresponding philosophic terminology is pragmatism. For the featuring of purpose the corresponding philosophic terminology is mysticism. For the featuring of act the corresponding philosophic terminology is realism.[29]

If one adopts Burke's philosophic terminology to explain the featurings, the plethora of scenic allusions can be further understood. Scene as alleged motive, which dominated Haynesworth's defenses, relates to materialism. Idealism, related to agent featurings, was denigrated in Haynesworth's justifications. It is here, perhaps, that Haynesworth blundered both culturally and rhetorically. I will argue that culturally, Haynesworth made a poor choice of justificatory strategy by adopting a materialistic stance. While such materialism may be quite appropriate for business executives or chairmen of corporate boards, it is hardly the stance which we, as a culture expect from a judge. From judges, keepers of the culture's ideals and hopes, we would expect to see idealism or

perhaps mysticism. But for a judge to exude such materialism seems to violate our collective notions about "impartiality," equality under the law, and the "blindness" of Dame Justice. That Haynesworth's major problems before the committee were money problems is not surprising. His materialistic worldview was seen as contrary to the idealistic principles which we demand from our judges. In essence, by featuring a philosophic materialism Haynesworth made a poor rhetorical choice: it was a poor choice because it undermined the culture's notion of "judgness" and reduced him to yet another materialist. Instead of setting himself apart from his cultural brethren by evincing idealism or mysticism, Haynesworth threw himself into the mainstream of the culture and concomitantly violated our expectations that a judge should somehow be above the materialistic fray.

This work has attempted to illumine the Haynesworth case by applying the Burkian ratio format. Ratios permit the critic to make very specific statements about the discourse under analysis and open the way for analytic speculation. The ratio method permits the critic to describe and understand the specific qualities of practical ethical dispute.

But while the method seems productive for the analysis of justificatory rhetoric, it may be applicable to a number of different types of discourse as well. Since the ratios rely upon two seminal rhetorical notions--motive and dialectical opposition--they may well have an applicability which transcends both the Haynesworth case and justificatory discourse in general.

To understand justificatory rhetoric is an auspicious goal. To understand the rhetorical conundrum is a complex goal indeed. But by understanding the place of justification and ratio analysis in the larger mosaic, the rhetorical critic may better be able to understand, not only two pieces of the puzzle, but something of the puzzle's picture as well.

Table 1
Clement Haynesworth: Featured Motives

Featured Element	Frequency	Percent
Scene	72	54
Act	26	20
Purpose	17	13
Agency	15	11
Agent	2	2
	132	

Table 2
Clement Haynesworth: Pentadic Ratios

Ratio	Frequency	Percent
agent-act	1	1
agent-scene	1	1
agent-purpose	0	0
agent-agency	0	0
act-agent	11	8
act-scene	10	8
act-purpose	4	3
act-agency	1	1
scene-agent	17	12
scene-act	43	32
scene-purpose	9	6
scene-agency	3	2
purpose-agent	7	5
purpose-act	5	4
purpose-scene	5	4
purpose-agency	0	0
agency-agent	9	6
agency-act	3	2
agency-scene	2	1
agency-purpose	1	1
	132	

Due to rounding error, percentage totals may not be exact.

Notes

[1]U.S., Congress, Senate, Committee on the Judiciary, Nomination of Clement F. Haynesworth, Jr., of South Carolina to be Associate Justice of the Supreme Court of the United States. Hearings before the Committee on the Judiciary. 91st Cong., 1st sess., 1969, pp. 39-107; 270-312.

[2]Parts of this analysis are based upon the author's Master's Thesis. Steven L. Vibbert, "A Descriptive Analysis of Ethical Justification," M.A. Thesis Purdue University 1977. The author wishes to thank Dr. Richard Crable of Purdue who directed the study and offered comments, and Dr. Bruce Gronbeck of the University of Iowa for his helpful suggestions on earlier versions of the essay.

[3]See Noreen W. Kruse, "Motivational Factors in Non-Denial Apologia," Central States Speech Journal 28 (Spring 1977): 13-23; Walter R. Fisher, "A Motive View of Communication," Quarterly Journal of Speech 56 (April 1970): 131-139; B.L. Ware and Wil A. Linkugel, "They Spoke in Defense of Themselves: On the Generic Criticism of Apologia," Quarterly Journal of Speech 59 (October 1973): 273-283; and David A. Ling, "A Pentadic Analysis of Senator Edward Kennedy's Address to the People of Massachusetts," Central States Speech Journal 31 (Spring 1970): 81-86.

[4]Kenneth Burke, Language As Symbolic Action (Berkeley: University of California Press, 1966), p. 64.

[5]Kenneth Burke, A Grammar of Motives (Berkeley: University of California Press, 1974), p. 136.

[6]Grammar, p. xv.

[7]Ibid., p. xv.

[8]Ibid., p. xv.

[9]Ibid., p. xv.

[10]Ibid., p. 127.

[11]Kenneth Burke, "The Philosophy of Literary Form," The Philosophy of Literary Form, rev. ed. (New York: Vintage Books, 1957), p. 18; see also Grammar, p. 295.

[12]Grammar, p. 262.

[13]Ibid., p. 11.

[14]Ibid., p. 402.

[15]Ibid., p. 402.

[16]Philosophy of Literary Form, p. 18.

[17]Grammar, p. 403.

[18]Grammar, p. 15.

[19]Ibid., p. 15.

[20]Ibid., p. 262. The ratios are listed on the preceeding Tables.

[21]To determine if ethical justification had occurred I read the discourse and then asked the following questions: (A) is there an ethical problem; (B) has an ethical charge been raised; (C) has the rhetor chosen to answer that charge by explanation or justification; (D) what motives can be attributed as "featured"; and (E) to what is the featured motive opposed? By following this sequence--isolating the ethical problem, understanding the rhetor's posture, determining the featured motive, and isolating the ratio opposite--the analyst is able to systematically code statements of ethical justification.

[22]Haynesworth, pp. 39-107; 270-312.

[23]Ibid., p. 271.

[24]Ibid., p. 53.

[25]Ibid., p. 43.

[26]Ibid., p. 43.

[27]Ibid., p. 74.

[28]Ling, p. 84.

[29]Grammar, p. 128.